SUPREME COURT U S

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JAMES R BROWNING, Clerk

Supreme Court of the United States

October Term, 1960

No. 329

VIRGIL WISEMAN,

Petitioner,

against

SINCLAIR REFINING COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JACOB RASSNER,
Attorney for Petitioner.

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Supreme Court of the United States

October Term, 1960

No.

—o—

VIRGIL WISEMAN,

Petitioner,

against

SINCLAIR REFINING COMPANY,

Respondent.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays this Court to grant certiorari, as he believes the Court of Appeals for the Second Circuit has applied an improper standard in taking on to itself and away from a Trial Judge, Hon. Willis W. Ritter, the very essence of a Trial Court's function, the authority to pass on the weight and sufficiency of evidence and inferences, and in addition thereto, has enunciated a new and revolutionary proposition of law, in conflict with an age old and universally accepted principle of maritime law denying to a seaman his claim for maintenance and cure.

Opinions Below

The Trial Court rendered no opinion, either orally or in writing.

The opinion of the Court of Appeals for the Second Circuit in this case is not reported.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on May 25, 1961. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Statement of Facts

Petitioner, Virgil Wiseman, was employed by Sinclair Refining Company, a corporation organized under the laws of the State of Maine, aboard the S. S. SHELDON CLARK, in the capacity of fireman/watertender. He was injured on or about the 14th day of August, 1957, while the vessel was at sea on its way from New York to Houston, Texas, off the coast of Cape Hatteras.

Petitioner had testified as follows ( ):

> "Q. Will you tell his Honor how you came in contact with any part of the ladder, how you got hurt?" (9a)
>
> "A. As I was going down the ladder I stepped on this greasy step and lost my balance and I grabbed on this other railing and swung around to catch my balance. My leg hit a bolt, about this big (indicating), sticking out. The bolt was holding a stanchion that held the ladder up. I got my balance again and I went down the ladder and went on to work." (10a)

The findings of facts and conclusions of law, signed March 29, 1961, after the appeal had been taken, were as follows:

> "FINDINGS OF FACT
>
> 1. That the defendant, Sinclair Refining Company, is a corporation of the State of Maine.
>
> 2. That during the month of August, 1957, the defendant was the owner of a merchant vessel known as the S. S. SHELDON CLARK.

3. That the plaintiff, Virgil Wiseman, was a seaman employed aboard the S. S. SHELDON CLARK during the month of August, 1957, in the capacity of fireman/watertender.

4. That there was a relationship of employer/employee between the defendant and the plaintiff herein.

5. That during the month of August, 1957, the defendant controlled, managed and operated the aforesaid vessel and had control of its appurtenances, including a certain steel engine room ladder.

6. That during the month of August, 1957, while the vessel was at sea on its way from New York to Houston, Texas, off the coast of Cape Hatteras, the plaintiff met with an accident.

7. That the cause of the accident was a slippery and greasy condition of the ladder, which caused the plaintiff to slip and fall and suffer injuries to his person.

8. That amongst the injuries the plaintiff suffered, the primary injuries were to his back and legs.

9. That the plaintiff was treated for said injuries at various times and places, as follows:

Grasslands Hospital, White Plains, New York, inpatient from October 9, 1957 to October 29, 1957.

U. S. Public Health Service Hospital, Stapleton, S. I. N. Y. inpatient from January 6, 1958 to March 5, 1958; outpatient from March 5, 1958 to March 10, 1958; inpatient from March 10, 1958 to May 8, 1958; outpatient from May 8, 1958 to October 9, 1958 to December 5, 1958; outpatient from December 5, 1958 to February 28, 1959.

10. That the plaintiff is in need of further hospitalization and surgical treatment in order to attain the maximum benefit of surgical and medical aid and attendance.

11. That the plaintiff is entitled to compensation for his injuries, including his pain, suffering, loss of wages and maintenance and cure.

12. That the plaintiff is entitled to be compensated for his pain, suffering, loss of wages, permanent injuries and maintenance and cure in the sum of $21,000.00.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the parties.

2. That the plaintiff is entitled to judgment against the defendant herein in the sum of $21,000.00, together with the costs and disbursements of this action."

The Court below found ( ):

"Plaintiff's own testimony demonstrates his failure on several occasions in the course of his cure to seek medical attention and thus to keep the cost of his maintenance and cure to a minimum."

The Court below held, we submit erroneously, that an admission by the petitioner that he did not actually see grease on the stairway, but only on his shoe after he slipped, constituted failure of proof.

Questions Presented

1. Whether State or Federal test of sufficiency of evidence is to be applied in a case where Federal jurisdiction is invoked, which question, in substance, was left open in the case of *Dick* v. *New York Life Insurance Co.*, 359 U. S. 437, 79 S. Ct. 921, treating with a jury verdict, as distinguished from a decision by the Court in the instant case. The *Dick* case, supra, rested on diversity, as distinguished from the instant case predicated on the provisions of the Jones Act, contractual general maritime law, and maintenance and cure.

2. Does a seaman forfeit his right to maintenance and cure if he gets drunk after he suffers a seaboard accident, and thereby delays treatment for seven days?

3. Is it the function of a Trial Judge or an Appellate Court to pass upon the weight and sufficiency of inferences and evidence?

4. Is the failure to make specific findings of fact, ipso facto, a basis for vacating a judgment and dismissing a complaint?

5. Does a seaman's intoxication after an injury, resulting in delay of treatment for seven days, constitute a bar to recovery of maintenance and cure following a seaboard accident?

Reasons for Granting the Writ

1. The Court below dealt with the question of sufficiency and weight of evidence in a manner contrary to the decision by the Supreme Court of the United States in the case of *Dick v. New York Life Insurance Co.*, 359 U. S. 437, 79 S. Ct. 921, wherein this Court stated at page 927:

> "Under the Erie rule,[9] presumptions (and their effects) and burden of proof are 'substantive' * * *."

In the case of *Kirby Lumber Corporation* v. *White*, 288 F. 2d 566 (1961), the Court stated at page 573:

> "It is further established in this circuit that the quantity and quality of proof necessary to make out a case for submission to a jury in a federal court are determined by the Seventh Amendment to the Constitution of the United States, the Federal Rules of Civil Procedure and the decisions of the Courts of the United States, Revlon, Inc. v. Buchanan, 1959, 271 F. 2d 795, 800, and cases therein cited."

It would appear from the foregoing that further instruction by the Supreme Court of the United States is needed to clarify whether proof, which is "substantive" in a jury

trial as "probative facts", to be decided by the trier of the facts, not reviewable by an Appellate Court, changes its character in a non-jury action, to questions of law, reviewable by Federal Appellate Courts.

2. The Court of Appeals for the Second Circuit has applied an improper standard of law, in taking from the Trial Court on to itself, the authority to pass upon the weight and sufficiency of evidence and reasonableness of inference.

The Supreme Court of the United States in the case of *Sentilles* v. *Inter-Caribbean Shipping Corp.*, 361 U. S. 107, 80 S. Ct. 173, constitutes authority for the granting of certiorari on the instant petition, if the Court be so inclined.

In the case of *Sentilles* v. *Inter-Caribbean Shipping Corp.*, supra, this Court granted certiorari, quoting the following at page 175:

> "It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences."

In the case at bar, there was no conflicting evidence, therefore, that which the Court below called "error" might be a basis for remand, but not for dismissal.

There was no contradiction of the evidence establishing the fact that petitioner slipped on the stairway aboard ship, fell and suffered injuries.

The proof stands uncontradicted that the stairway was slippery. The shipowner called no witness to contradict the charge that the stairway was greasy, and that this condition caused petitioner to slip and fall, nor did the shipowner offer any explanation for its failure to call such witness.

The Court below applied an improper standard of review in basing its decision that the Trial Court erred in holding that the petitioner had sustained his burden of proof on inference, in the absence of direct proof as to where the grease came from.

The standard of review applied by the Court below is contrary to well established law.

We submit that the same "common sense, common understanding and fair beliefs, grounded on evidence consisting of * * * or proof of circumstances from which inferences can fairly be drawn." which is required of a jury as the basis for its verdict, constitutes ample justification for a decision by a Trial Court. This quote is from *Schulz* v. *Pennsylvania Railroad Company,* 350 U. S. 523, 76 S. Ct. 608, 610.

The standard of review adopted by the Court below is further in direct conflict with the decision in the case of *Johnson* v. *Griffiths S. S. Co.,* 150 F. 2d 224, wherein the Court stated at page 226:

> "In determining proximate cause, it is not essential that the causal connection be shown by direct evidence; the causal connection can be shown by facts and circumstances which, in the light of ordinary experience, reasonably suggests that the defendant's negligence in the manner charged operated proximately to produce the injury. 38 Am. Jr. 334.
>
> It is reasonable to conclude that the negligence established in this case was sufficient to have been the cause of the injury, if the deceased was at the point where this negligent condition prevailed."

3. The Court below has enunciated a principle of law in conflict with all prior and universally accepted authority that a seaman is entitled to the reasonable expenses of maintenance and cure until he has attained the maximum benefit of treatment, asserting, in substance, that a seaman forfeits this right if, by reason of intoxication, he delays treatment for seven days.

The law as to the basic right for maintenance and cure has been so well established by the Supreme Court of the United States that we feel it amply sufficient to mention but a few authorities.

Mahnich v. *Southern S. S. Co.*, 321 U. S. 96, 64 S. Ct. 455;
Calmar S. S. Corp. v. *Taylor*, (1938) 303 U. S. 525, 58 S. Ct. 651;
Farrell v. *United States*, 336 U. S. 511, 69 S. Ct. 707, (1949).

The duty to provide maintenance and cure finds its origin in ancient maritime law. It arises out of a personal indenture by which the seaman is bound to his ship and, in return, the vessel is bound to him in maintenance and cure. *Enochasson* v. *Freeport Sulphur Co.*, 7 F. 2d 674.

The law is well settled that a seaman is entitled to maintenance and cure during his illness, at the expense of his employer, until the seaman has received the maximum benefit of cure and treatment. *Calmar S. S. Corp* v. *Taylor*, supra; *Farrell* v. *United States*, supra.

The Supreme Court of the United States has recently further clarified the applicable law in the case of *Kossick* v. *United Fruit Co.*, 363 U. S. 838, 81 S. Ct. 886, pointing out the fact that a seaman may not refuse public health hospital service which he can obtain without charge and retain private physicians at the expense of the shipowner. The Court did not state that a delay in treatment constitutes a forfeiture of a seaman's right to maintenance and cure, which he would otherwise have but for the delay of seven days in seeking treatment.

The decision by the Court below constitutes a radical departure from well established law as repeatedly enunciated by the Supreme Court of the United States and, in addition thereto, the opinion by the Court below is in conflict with the recent decision by the United States Court of Appeals for the Fifth Circuit, *Schlichter* v. *Port Arthur Towing Company*, 288 F. 2d 801 (1961), holding that intoxication does not constitute a forfeiture of a Jones Act claim.

If intoxication constitutes no basis for forfeiture but merely in mitigation of a Jones Act claim, where the intoxication is a contributing factor to the accident, it is self apparent, without the need of argument, that intoxication, unrelated and in nowise affecting the injury, certainly constitutes no basis for setting aside the judgment by the Trial Court and dismissing a seaman's action.

4. The Court below, in conflict with prevailing authority, has enunciated a principle of law that circumstantial evidence may not constitute the basis for awarding damages in a personal injury case.

This is in conflict with the uniform decisions by this Honorable Court, going back to the old case of *The Robert Edwards*, 6 Wheat. 187, 190, 5 L. Ed. 238.

On December 25, 1957, in the case of *Rogers* v. *Missouri Pacific Railroad Co.*, 352 U. S. 500, 77 S. Ct. 443, the following appears in footnote "17", citing *The Robert Edwards*, supra:

> "17. Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence. The Robert Edwards, 6 Wheat. 187, 190, 5 L. Ed. 238."

In addition to the fact that the Court below applied an improper standard of review, the fact remains that the Court below took on to itself, we submit erroneously, the question of resolving the weight and sufficiency of

evidence, and the function to draw inferences from the facts.

When a Court takes from the finder of the facts the authority to consider the weight and sufficiency of facts, such action constitutes reversible error. *Rogers* v. *Missouri Pacific Railroad Co.*, supra; *Schulz* v. *Pennsylvania R. Co.*, supra; *Stone* v. *New York, C. & St. L. R. Co.*, 344 U. S. 407, 73 S. Ct. 358, 97 L. Ed. 441; *Carter* v. *Atlanta & St. A. B. R. Co.*, 338 U. S. 430, 70 S. Ct. 226, 94 L. Ed. 236; *Wilkerson* v. *McCarthy*, 336 U. S. 53, 69 S. Ct. 413, 93 L. Ed. 497; *Anderson* v. *Atchison, T. & S. F. R. Co.*, 333 U. S. 821, 68 S. Ct. 854, 92 L. Ed. 1108; *Lillie* v. *Thompson*, 332 U. S. 459, 68 S. Ct. 140, 92 L. Ed. 73; *Myers* v. *Reading Co.*, 331 U. S. 477, 67 S. Ct. 1334, 91 L. Ed. 1615; *Ellis* v. *Union Pac. R. Co.*, 329 U. S. 649, 67 S. Ct. 598, 91 L. Ed. 572; *Jesionowski* v. *Boston & M. R. Co.*, 329 U. S. 452, 67 S. Ct. 401, 91 L. Ed. 416; *Lavender* v. *Kurn*, 327 U. S. 645, 66 S. Ct. 740, 90 L. Ed. 916; *Keeton* v. *Thompson*, 326 U. S. 689, 66 S. Ct. 135, 90 L. Ed. 405; *Blair* v. *Baltimore & O. R. Co.*, 323 U. S. 600, 65 S. Ct. 545, 89 L. Ed. 490; *Tiller* v. *Atlantic Coast Line R. Co.*, 323 U. S. 574, 65 S. Ct. 421, 89 L. Ed. 465; *Tennant* v. *Peoria & P. U. R. Co.*, 321 U. S. 29, 64 S. Ct. 409, 88 L. Ed. 520; *Bailey* v. *Central Vt. R. Co.*, 319 U. S. 350, 63 S. Ct. 1062, 87 L. Ed. 1444; *Tiller* v. *Atlantic Coast Line R. Co.*, 318 U. S. 54, 63 S. Ct. 444, 87 L. Ed. 610; *Seago* v. *New York Cent. R. Co.*, 315 U. S. 781, 62 S. Ct. 806, 86 L. Ed 1188; *Jenkins* v. *Kurn*, 313 U. S. 256, 61 S. Ct. 934, 85 L. Ed. 1316.

> *Sentilles* v. *Inter-Caribbean Shipping Corp.* supra.; *Michalic* v. *Cleveland Tanker, Inc.*, (1960) 364 U. S. 325, 81 S. Ct. 6.

5. The decision by the Court below is in conflict with the decision by the Supreme Court of the United States in *McAllister v. United States*, 348 U. S. 19, 75 S. Ct. 6, and *Sentilles v. Inter-Caribbean Shipping Corp.*, supra.

The Court below is in disagreement with the Trial Court as to the sufficiency of the proof, although uncontradicted, to support a judgment in favor of the seaman.

Mr. Justice Frankfurter in his concurring opinion in the case of *Wilkerson* v. *McCarthy*, 336 U. S. 53, 69 S. Ct. 413, has said that " * * * since questions of negligence are questions of degree, often very nice differences of degree, judges of competence and conscience have in the past, and will in the future, disagree whether proof in a case is sufficient to demand submission to the jury" (p. 419).

Obviously, there is a difference of opinion between the Court below and the Trial Court. The difference of opinion precludes the conclusion "clearly erroneous".

In the case of *McAllister* v. *United States*, supra, this Honorable Court reversed the Court below when it took from the Trial Court, on to itself, the authority to pass upon the weight and sufficiency of the evidence.

In the case of *Imperial Oil, Limited* v. *Drlik*, 234 F. 2d 4, cert. denied, 352 U. S. 941, 77 S. Ct. 261, the Court of Appeals for the Sixth Circuit stated at page 10:

> "Not being clearly erroneous it will not be disturbed on this review. McAllister v. United States, 348 U. S. 19, 20, 75 S. Ct. 6, 99 L. Ed. 20; United States v. Standard Oil Co. of Kentucky, 6 Cir., 217 F. 2d 539, 540."

6. The decision by the Court below is in conflict with a prior decision in the Court below in the case of *Becker v. Waterman S.S. Corporation*, 179 F. 2d 713, which held at page 715:

> "If the plaintiff was also negligent in failing to see the blob of oil on which he slipped, his own negligence may reduce the amount of his recovery but is not a bar to his action."

7. The decision by the Court below is in conflict with the decision by the United States Court of Appeals for the Sixth Circuit in the case of *West Tennessee Limestone Co. v. Federal Barge Lines*, 288 F. 2d 663 (1961), and is a departure from *Rule 52(a) of the Federal Rules of Civil Procedure*, 28 U. S. C. A.

In *West Tennessee Limestone Co.* v. *Federal Barge Lines*, supra, the Court stated at pages 663, 664:

> "The questions presented here are wholly factual. Under Rule 52 (a) of the Federal Rules of Civil Procedure, 28 U. S. C. A. the Findings of Fact of a trial judge, sitting without a jury, will not be set aside unless clearly erroneous. That rule, as such, is not applicable to a proceeding in admiralty. [Rule 81 (a) (1) Federal Rules of Civil Procedure.] However, our power to review and set aside such Findings of Fact in an admiralty case is limited generally to that set forth in said Rule 52 (a). McAllister v. United States, 1954, 348 U. S. 19, 75 S. Ct. 6, 99 L. Ed. 20; Imperial Oil, Limited v. Drlik, 6 Cir., 1956, 234 F. 2d 4, 10; United States v. Standard Oil Co. of Kentucky, 6 Cir., 1954, 217 F. 2d 539, 540."

8. The decision by the Court below is in conflict with the decision by the United States Court of Appeals for the Third Circuit in the case of *Petition of Oskar Tiedemann and Company*, 289 F. 2d 237 (1961), wherein the Court stated at page 240:

> "Our standard for review of the district court has been clearly set forth in McAllister v. United States, 1954, 348 U. S. 19, 75 S. Ct. 6, 99 L. Ed. 20. Unless the findings of fact by the district court are clearly erroneous we are to accept them."

Conclusion

The enunciation of a revolutionary principle of law that a seaman forfeits his right to maintenance and cure, if he gets drunk and delays treatment for seven days, does violence to the well established and universally accepted concept of maintenance and cure.

The taking from a Trial Judge the right to pass upon the weight and sufficiency of evidence is in violation of Rule 52 (a) of the Federal Rules of Civil Procedure, 28 U. S. C. A., as so clearly and repeatedly defined by the Supreme Court of the United States, that questions of fact are not the proper subject of review by an Appellate Court.

The fact that petitioner has sustained his burden of proof in the instant case, and that the Court below was in error in holding that he failed to do so, is not of universal or general import, but the fact that the finding by an experienced Federal Court Judge that the weight and sufficiency of the evidence, and the inferences drawn therefrom, constitutes a proper basis of review, in the absence of clear error, devitalizes and renders null and void the provisions of Rule 52 (a) of the Federal Rules of Civil Procedure, 28 U. S. C. A., and its protection of judgments obtained by due processes of law.

All people of the United States have the absolute right to the protection accorded by the laws of the United States, as enunciated by the Supreme Court of the United States.

Any departure therefrom, or refusal by a lower Court to be controlled thereby, merits the granting of a petition for certiorari.

Respectfully submitted,

Jacob Rassner

JACOB RASSNER,
Attorney for Petitioner.

APPENDIX

(Opinion of United States Court of Appeals for the Second Circuit)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 371—October Term, 1960.

(Argued May 5, 1961 Decided May 25, 1961.)

Docket No. 26779

—o—

VIRGIL WISEMAN,

Plaintiff-Appellee,

v.

SINCLAIR REFINING COMPANY,

Defendant-Appellant.

—o—

Before:

LUMBARD, *Chief Judge,*
HINCKS and MOORE, *Circuit Judges.*

Defendant appeals from a judgment for the plaintiff in a personal injury action brought under the Jones Act entered in the United States District Court for the Southern District of New York, Willis W. Ritter, *Judge,* of the District of Utah, sitting by designation.

Reversed and remanded with a direction to dismiss.

VINCENT A. CATOGGIO, New York City (Purdy, Lamb & Catoggio, New York City, on the brief), *for defendant-appellant.*

JACOB RASSNER, New York City (Henry Isaacson, New York City, on the brief), *for plaintiff-appellee.*

HINCKS, *Circuit Judge*:

Plaintiff, claiming while a seaman on defendant's vessel to have slipped on a greasy ladder step and to have knocked his ankle against its guard rail, brought this Jones Act action seeking damages for negligence and unseaworthiness as well as maintenance and cure. Trial was to the court without a jury. Only plaintiff and a physician who had examined him for testimonial purposes testified. The judge found for plaintiff in the amount of $21,000, "including all three matters."[1] He made no independent findings of fact or conclusions of law, but asked plaintiff's counsel to prepare them, declining the offer of defendant's counsel also to submit findings. The findings so prepared were filed with the judgment but were not signed at that time.

The case must be reversed. The principal proof that plaintiff's back condition was related to his fall aboard defendant's vessel was the physician's testimony that sprains of the lumbar and lumbosacral spine were caused by a wrenching at the time of the accident.[2] After defendant's counsel had established that the doctor made no inquiry as to the previous history of plaintiff's back, the trial judge barred counsel from asking whether it would be possible that the condition antedated the fall. This was error. The doctor also testified that the ulcer on plaintiff's right leg was caused by the fall. After the doctor recognized a medical dictionary as a reliable authority

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[1] Plaintiff's counsel requested maintenance and cure in the amount of $5,762, damages of $16,800 for lost wages, and damages of $8,500 for pain and suffering, i.e., $30,972. Without explanation the court awarded $21,000, "including all three matters."

[2] The plaintiff, after testifying that he injured his right leg on the fall, was asked on direct examination if any other part of his body was involved. He replied: "At that time it didn't bother me, but I did have a wrenched back, but it didn't bother me at that time."

on medical terms but noted that he was unfamiliar with its definition of an ulcer, defendant's counsel was not allowed to ask the doctor if he agreed with the dictionary definition. This too was error, especially in view of the importance of the physician's testimony. *Reilly* v. *Pinkus*, 338 U. S. 269, 275; *Abrams* v. *Gordon*, D. C. Cir., 276 F. 2d 500; *Lawrence* v. *Nutter*, 4 Cir., 203 F. 2d 540, 542-43; see *Dolcin* v. *F. T. C.*, D. C. Cir., 219 F. 2d 742, 745-47, cert. denied 348 U. S. 981; but see *Shaw* v. *Duncan*, 10 Cir., 194 F. 2d 779, 783.

Plaintiff's own testimony demonstrates his failure on several occasions in the course of his cure to seek medical attention and thus to keep the cost of his maintenance and cure to a minimum. *Wilson* v. *United States*, 2 Cir., 229 F. 2d 277, 281; *Repsholdt* v. *United States*, 7 Cir., 205 F. 2d 852, 856-57, cert. denied 346 U. S. 928; *Bowers* v. *Seas Shipping Co.*, 4 Cir., 185 F. 2d 352-354; *The Saguache*, 2 Cir., 112 F. 2d 482. The plaintiff also failed to offer credible evidence to support a substantial allowance for loss of future wages. He worked for the defendant only a fortnight and there is scant clue in the evidence whether his subsequent unemployment was caused by his injuries or by lack of available work or lack of desire to work. Since it is impossible, even with the aid of the unsigned findings, to know how much of the judgment represents maintenance and cure and loss of future earnings, the entire judgment must be vacated.

More basic ground for reversal is the absence of evidence of liability. Neither plaintiff nor any other witness testified that they ever saw grease on the stair. To be sure, plaintiff said on direct examination that the step was greasy. But on cross-examination he admitted that he did not see grease there at the time; that he only saw grease on his shoe. But where that grease came from does not appear.

Reversed and remanded with a direction to dismiss.

(Judgment)

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fifth day of May, one thousand nine hundred and sixty-one.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,
HON. CARROLL C. HINCKS,
HON. LEONARD P. MOORE,
Circuit Judges.

VIRGIL WISEMAN,
Plaintiff-Appellee,

v.

SINCLAIR REFINING COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded with a direction to dismiss in accordance with the opinion of this court; with costs to the appellant.

A. Daniel Fusaro,
Clerk.

A true copy.

A. Daniel Fusaro
Clerk

(Seal)